



April 3, 2007

ENGROSSED SENATE BILL No. 261

DIGEST OF SB 261 (Updated March 29, 2007 11:26 am - DI 75)

Citations Affected: IC 32-25.

Synopsis: Condominium common areas and facilities. Provides that in certain townships all or part of the common areas and facilities of a condominium may be conveyed or encumbered if at least 95% of the co-owners agree to the action. Provides that a different percentage of votes may be required to convey or encumber the common areas and facilities if the percentage is specified in: (1) the condominium declaration or condominium association bylaws; or (2) an amendment to the declaration or bylaws, if the amendment is approved by the co-owners. Specifies that the different percentage of votes in the declaration or bylaws may not allow less than 95% of the co-owners to convey or encumber all or part of the common areas or facilities. Provides that proceeds from the conveyance or encumbrance of common areas and facilities must be distributed to co-owners as common profits.

Effective: July 1, 2007.

Heinold, Mishler

(HOUSE SPONSORS — DEMBOWSKI, FRIEND, DERMODY)

January 11, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

February 20, 2007, reported favorably — Do Pass.

February 26, 2007, read second time, amended, ordered engrossed. Engrossed.

February 27, 2007, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 6, 2007, read first time and referred to Committee on Rules and Legislative Procedures.

March 22, 2007, reassigned to Committee on Local Government.

April 2, 2007, amended, reported — Do Pass.

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ES 261—LS 7325/DI 69+



April 3, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 261

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-25-4-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) Each
3 condominium unit owner is entitled to an undivided interest in the
4 common areas and facilities as designated in the declaration. Except as
5 provided in subsection (b), the undivided interest must be expressed as
6 a percentage interest based on:
7 (1) the size of the unit in relation to the size of all units in the
8 condominium;
9 (2) the value of each condominium unit in relation to the value of
10 all condominium units in the condominium; or
11 (3) the assignment of an equal percentage undivided interest to
12 each condominium unit.
13 An undivided interest allocated to each condominium unit in
14 accordance with this subsection must be indicated in a schedule of
15 undivided interests in the declaration. However, if the declaration does
16 not specify the method of allocating the percentage undivided interests,
17 an equal percentage undivided interest applies to each condominium

ES 261—LS 7325/DI 69+



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unit. The total undivided interests allocated in accordance with subdivision (1) or (2) must equal one hundred percent (100%).

(b) With respect to an expandable condominium, the declaration may allocate undivided interests in the common area on the basis of value if:

(1) the declaration prohibits the creation of any condominium units not substantially identical to the condominium units depicted on the recorded plans of the declaration; or

(2) the declaration:

(A) prohibits the creation of any condominium units not described in the initial declaration; and

(B) contains a statement on the value to be assigned to each condominium unit created after the date of the declaration.

(c) Interests in the common areas may not be allocated to any condominium units to be created within any additional land until the plats and plans and supplemental declaration depicting the condominium units to be created are recorded. Simultaneously with the recording of the plats and plans for the condominium units to be created, the declarant must execute and record an amendment to the initial declaration reallocating undivided interests in the common areas so that the future condominium units depicted on the plats and plans will be allocated undivided interests in the common areas on the same basis as the condominium units depicted in the prior recorded plats and plans.

(d) Except as provided in **section 3.5 of this chapter and in IC 32-25-8-3**, the undivided interest of the owner of the condominium unit in the common areas and facilities, as expressed in the declaration, is permanent and may not be altered without the consent of the co-owners. A consent to alteration must be stated in an amended declaration, and the amended declaration must be recorded. The undivided interest may not be transferred, encumbered, disposed of, or separated from the condominium unit to which it appertains, and any purported transfer, encumbrance, or other disposition is void. The undivided interest is considered to be conveyed or encumbered with the condominium unit to which it appertains even though the undivided interest is not expressly mentioned or described in the conveyance or other instrument.

(e) The common areas and facilities shall remain undivided. A condominium unit owner or any other person may bring an action for partition or division of any part of the common areas and facilities if the property has been removed from this chapter as provided in IC 32-25-8-12 and IC 32-25-8-16. Any covenant to the contrary is void.

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(f) Each condominium unit owner:

(1) may use the common areas and facilities in accordance with the purpose for which the common areas and facilities were intended; and

(2) may not, in the owner's use of the common areas and facilities, hinder or encroach upon the lawful rights of the other co-owners.

(g) The:

(1) necessary work of:

(A) maintenance;

(B) repair; and

(C) replacement;

of the common areas and facilities; and

(2) making of any additions or improvements to the common areas and facilities;

may be carried out only as provided in this chapter and in the bylaws.

(h) The association of condominium unit owners has the irrevocable right, to be exercised by the manager or board of directors, to have access to each condominium unit from time to time during reasonable hours as is necessary for:

(1) the maintenance, repair, or replacement of any of the common areas and facilities:

(A) in the condominium unit; or

(B) accessible from the condominium unit; or

(2) making emergency repairs in the condominium unit necessary to prevent damage to:

(A) the common areas and facilities; or

(B) another condominium unit.

SECTION 2. IC 32-25-4-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3.5. (a) This section applies only to a condominium located on the shore of a lake located in a township with a population of more than three thousand one hundred (3,100) but less than three thousand eight hundred (3,800) located in a county having a population of more than forty-five thousand (45,000) but less than forty-five thousand nine hundred (45,900).**

(b) Except as otherwise provided in a statement described in:

(1) IC 32-25-7-1(a)(10) and included in:

(A) the declaration; or

(B) an amendment to the declaration, if the amendment is approved by at least ninety-five percent (95%) of co-owners; or

(2) IC 32-25-8-2(12) and included in:

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(A) the bylaws; or

(B) an amendment to the bylaws, if the amendment is approved by the percentage of votes set forth in the bylaws under IC 32-25-8-2(11);

part or all of the common areas and facilities of a condominium may be conveyed or subjected to a security interest by the association of co-owners if at least ninety-five percent (95%) of the co-owners, including at least ninety-five percent (95%) of the co-owners of condominium units not owned by the declarant, agree to the action. However, if the common areas and facilities proposed to be conveyed or encumbered under this section include any limited common areas and facilities, all the owners of the limited common areas and facilities to be conveyed or encumbered must agree to the conveyance or encumbrance.

(c) An agreement to convey or encumber common areas and facilities under this section must be evidenced by an agreement:

(1) executed in the same manner as a deed or any other instrument recognized by the state for the conveyance or transfer of interests in title; and

(2) signed by:

(A) at least ninety-five percent (95%) of the co-owners, as required by this section; or

(B) another percentage of the co-owners specified in a statement described in subsection (b)(1) or (b)(2).

An agreement under this subsection is effective upon being recorded.

(d) Proceeds from the conveyance or encumbrance of common areas and facilities under this section shall be distributed to co-owners as common profits under IC 32-25-8-6. However, if the common areas and facilities conveyed or encumbered under this section include limited common areas and facilities, proceeds from the conveyance or encumbrance of the limited common areas and facilities shall be distributed to the owners of the limited common areas and facilities according to the percentage of the owners' undivided interest in the limited common areas and facilities.

(e) A conveyance or encumbrance of common areas and facilities not made in accordance with:

(1) this section; or

(2) a statement described in subsection (b)(1) or (b)(2);

is void.

SECTION 3. IC 32-25-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) The owner of the

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land on which a condominium is declared shall record with the recorder of the county in which the land is situated a declaration. Except as provided in section 2 or 3 of this chapter, the declaration must include the following:

(1) A description of the land on which the building and improvements are or are to be located.

(2) A description of the building, stating:

(A) the number of stories and basements; and

(B) the number of condominium units.

(3) A description of the common areas and facilities.

(4) A description of the limited common areas and facilities, if any, stating to which condominium units their use is reserved.

(5) The percentage of undivided interest in the common areas and facilities appertaining to each condominium unit and its owner for all purposes, including voting.

(6) A statement of the percentage of votes by the condominium unit owners required to determine whether to:

(A) rebuild;

(B) repair;

(C) restore; or

(D) sell;

the property if all or part of the property is damaged or destroyed.

(7) Any covenants and restrictions in regard to the use of:

(A) the condominium units; and

(B) common areas and facilities.

(8) Any further details in connection with the property that:

(A) the person executing the declaration considers desirable; and

(B) are consistent with this article.

(9) The method by which the declaration may be amended in a manner consistent with this chapter.

(10) This subdivision applies only to a condominium located on the shore of a lake located in a township with a population of more than three thousand one hundred (3,100) but less than three thousand eight hundred (3,800) located in a county having a population of more than forty-five thousand (45,000) but less than forty-five thousand nine hundred (45,900). A statement of the percentage of votes by the condominium unit owners required to convey or encumber part or all of the common areas and facilities. A statement under this subdivision may not allow less than ninety-five percent (95%) of the condominium unit owners, or less than ninety-five

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percent (95%) of the owners of condominium units not owned by the declarant, to convey or encumber part or all of the common areas and facilities. If the declaration does not include a statement under this subdivision, IC 32-25-4-3.5 applies.

(b) A true copy of the bylaws shall be annexed to and made a part of the declaration.

(c) The record of the declaration shall contain a reference to the:

- (1) book;
- (2) page; and
- (3) date of record;

of the floor plans of the building affected by the declaration.

SECTION 4. IC 32-25-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. The bylaws must provide for the following:

(1) With respect to the board of directors:

- (A) the election of the board from among the co-owners;
- (B) the number of persons constituting the board;
- (C) the expiration of the terms of at least one-third (1/3) of the directors annually;
- (D) the powers and duties of the board, including whether the board may engage the services of a manager or managing agent;
- (E) the compensation, if any, of the directors; and
- (F) the method of removal from office of directors.

(2) The method of calling meetings of the co-owners and the percentage, if other than a majority of co-owners, that constitutes a quorum.

(3) The election from among the board of directors of a president, who shall preside over the meetings of:

- (A) the board of directors; and
- (B) the association of co-owners.

(4) The election of a secretary, who shall keep the minute book in which resolutions shall be recorded.

(5) The election of a treasurer, who shall keep the financial records and books of account.

(6) The maintenance, repair, and replacement of the common areas and facilities and payments for that maintenance, repair, and replacement, including the method of approving payment vouchers.

(7) The manner of collecting from each condominium owner the owner's share of the common expenses.

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(8) The designation and removal of personnel necessary for the maintenance, repair, and replacement of the common areas and facilities.

(9) The method of adopting and of amending administrative rules governing the details of the operation and use of the common areas and facilities.

(10) The restrictions on and requirements respecting the use and maintenance of the condominium units and the use of the common areas and facilities that are:

(A) not set forth in the declaration; and

(B) designed to prevent unreasonable interference with the use of their respective units and of the common areas and facilities by the several co-owners.

(11) The percentage of votes required to amend the bylaws.

(12) This subdivision applies only to a condominium located on the shore of a lake located in a township with a population of more than three thousand one hundred (3,100) but less than three thousand eight hundred (3,800) located in a county having a population of more than forty-five thousand (45,000) but less than forty-five thousand nine hundred (45,900). A statement of the percentage of votes by the condominium unit owners required to convey or encumber part or all of the common areas and facilities. A statement under this subdivision may not allow less than ninety-five percent (95%) of the condominium unit owners, or less than ninety-five percent (95%) of the owners of condominium units not owned by the declarant, to convey or encumber part or all of the common areas and facilities. If the bylaws do not include a statement under this subdivision, IC 32-25-4-3.5 applies.

~~(+2)~~ (13) Other provisions consistent with this article considered necessary for the administration of the property.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 261, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 261 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 6, Nays 0.

 SENATE MOTION

Madam President: I move that Senate Bill 261 be amended to read as follows:

Page 5, line 29, after "facilities." insert "**A statement under this subdivision may not allow less than seventy-five percent (75%) of the condominium unit owners, or less than seventy-five percent (75%) of the owners of condominium units not owned by the declarant, to convey or encumber part or all of the common areas and facilities.**".

Page 7, line 1, after "facilities." insert "**A statement under this subdivision may not allow less than seventy-five percent (75%) of the condominium unit owners, or less than seventy-five percent (75%) of the owners of condominium units not owned by the declarant, to convey or encumber part or all of the common areas and facilities.**".

(Reference is to SB 261 as printed February 21, 2007.)

HEINOLD

 SENATE MOTION

Madam President: I move that Senator Mishler be added as second author of Engrossed Senate Bill 261.

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ES 261—LS 7325/DI 69+



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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred Senate Bill 261, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 30, after "(a)" insert **"This section applies only to a condominium located on the shore of a lake located in a township with a population of more than three thousand one hundred (3,100) but less than three thousand eight hundred (3,800) located in a county having a population of more than forty-five thousand (45,000) but less than forty-five thousand nine hundred (45,900). (b)".**

Page 3, line 35, delete "seventy-five percent (75%)" and insert **"ninety-five percent (95%)"**.

Page 4, line 2, delete "seventy-five percent (75%)" and insert **"ninety-five percent (95%)"**.

Page 4, line 3, delete "seventy-five percent (75%)" and insert **"ninety-five percent (95%)"**.

Page 4, line 10, delete "(b)" and insert **"(c)"**.

Page 4, line 16, delete "seventy-five percent (75%)" and insert **"ninety-five percent (95%)"**.

Page 4, line 19, delete "(a)(1) or (a)(2)" and insert **"(b)(1) or (b)(2)"**.

Page 4, line 22, delete "(c)" and insert **"(d)"**.

Page 4, line 31, delete "(d)" and insert **"(e)"**.

Page 4, line 34, delete "(a)(1) or (a)(2)" and insert **"(b)(1) or (b)(2)"**.

Page 5, line 27, after "(10)" insert **"This subdivision applies only to a condominium located on the shore of a lake located in a township with a population of more than three thousand one hundred (3,100) but less than three thousand eight hundred (3,800) located in a county having a population of more than forty-five thousand (45,000) but less than forty-five thousand nine hundred (45,900)."**

Page 5, line 30, delete "seventy-five" and insert **"ninety-five"**.

Page 5, line 31, delete "(75%)" and insert **"(95%)"**.

Page 5, line 32, delete "seventy-five percent (75%)" and insert **"ninety-five percent (95%)"**.

Page 7, line 4, after "(12)" insert **"This subdivision applies only to a condominium located on the shore of a lake located in a township with a population of more than three thousand one hundred (3,100) but less than three thousand eight hundred (3,800) located in a county having a population of more than forty-five thousand (45,000) but less than forty-five thousand nine hundred (45,900)."**



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Page 7, line 7, delete "seventy-five" and insert "**ninety-five**".

Page 7, line 8, delete "(75%)" and insert "**(95%)**".

Page 7, line 9, delete "seventy-five percent (75%)" and insert "**ninety-five percent (95%)**".

and when so amended that said bill do pass.

(Reference is to SB 261 as reprinted February 26, 2007.)

SMITH V, Chair

Committee Vote: yeas 8, nays 3.

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